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No. 85-1885

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1985

GOOD'S FURNITURE HOUSE, INC.,
Petitioner,

v.

IOWA STATE BOARD OF TAX REVIEW,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

WHETHER GOOD'S FURNITURE HAS SUFFICIENT CONTACTS WITH THE STATE OF IOWA TO ALLOW IOWA TO REQUIRE GOOD'S FURNITURE TO COLLECT IOWA'S USE TAX WHERE GOOD'S FURNITURE MAKES REGULAR DELIVERIES INTO IOWA IN ITS OWN TRUCK, ITS EMPLOYEES ASSEMBLE AND REPAIR FURNITURE AND MAKE COLLECTIONS OF THE PURCHASE PRICE AT THE HOMES OF IOWA CUSTOMERS, AND IT ADVERTISES ITS STORE THROUGH AN IOWA BASED TELEVISION STATION.

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STATEMENT OF THE CASE

The respondent Iowa State Board of Tax Review accepts petitioner's Statement of Facts as essentially correct. In order to correct what are probably typographical errors, however, respondent states that the audit period ran from April 1, 1977 through March 31, 1982, and the hearing officer's decision was issued on September 9, 1983.

REASONS WHY THE PETITION SHOULD BE DENIED

1. The Iowa Supreme Court decision in this case is correct and does not conflict with decisions of this Court in Miller Brothers and subsequent cases.

The Iowa Supreme Court decision in this case is in accord with those of other state courts in cases involving furniture dealers located outside the taxing state who sold furniture to the taxing state's residents and who regularly delivered furniture to customers in the taxing state. *See Cooey-Bentz Co. v. Lindley*, 66 Ohio St. 2d 54, 419 N.E.2d 1087 (1981); *Rowe-Genereux, Inc. v. Vermont Department of Taxes*, 138 Vt. 130, 411 A.2d 1345 (1980); *Matter of Sales or Use Tax Liability of Webber Furniture*, 290 N.W.2d 865 (S.D. 1980). In seeking a writ of certiorari to the Supreme Court of Iowa, petitioner claims that the Iowa Supreme Court's decision, while consistent with other state court decisions, conflicts with this Court's

decision in *Miller Brothers Co. v. Maryland,* 347 U.S. 340 (1954), and its progeny. Examination of the decision below reveals that this is not correct.

In its decision, the Iowa Supreme Court discussed *Miller Brothers Co. v. Maryland,* 347 U.S. 340 (1954), and subsequent cases of this Court addressing the issue of whether a retailer has sufficient nexus with a state for the state to require it to collect a use tax. The Iowa Supreme Court applied the *Miller Brothers* nexus test, as set forth in those cases. The relevant constitutional test for establishing whether an out-of-state seller can be required to collect and pay the use tax is whether the facts demonstrate some definite link or minimum connection between the state and the person it seeks to tax. *National Geographic Society v. California Board of Equalization,* 430 U.S. 551, 561 (1977).[1] The Iowa Court then properly concluded that Good's Furniture had sufficient Iowa contacts to allow Iowa to require it to collect and pay Iowa's use tax without violating due process requirements.

The facts in *Miller Brothers* are so different from Good's Furniture's situation that the lack of a constitutional nexus in *Miller Brothers* does not conflict with a finding of sufficient nexus for Good's Furniture. In

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[1]Good's Furniture cites *General Trading Co. v. State Tax Commission of Iowa,* 322 U.S. 335 (1944), for its proposition that "no State can tax the privilege of doing interstate business." (Petition p.6). This proposition is no longer the law. In *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 288-89 (1977), the rule that a state tax on the "privilege of doing business" is per se unconstitutional when it is applied to interstate commerce was expressly rejected.

Miller Brothers, over a period of more than four and a half years, Miller Brothers delivered, or paid a common carrier to transport, on an occasional and irregular basis only $9,500 worth of merchandise to customers in Maryland. In this case, Good's Furniture *annually* sold and delivered to Iowa customers on a repeated and regular basis between $150,000 to $200,000 worth in merchandise, which was approximately 10% of its sales. In *Miller Brothers,* the store delivered only some of the purchases made by Maryland residents, and many of those were delivered by a common carrier. In this case, Good's Furniture employees personally delivered the furniture, in the store's own truck, in virtually all instances. Good's Furniture made ten to twelve Iowa deliveries each week, or more than 500 deliveries each year. There was, therefore, a course of conduct in which the seller regularly effected deliveries within the taxing state by its own delivery trucks, rather than merely an occasional presence as was found in *Miller Brothers.*

In addition to the deliveries, Good's Furniture's employees would occasionally do some assembly at the Iowa delivery site of the furniture they delivered and perform minor repairs. They also picked up any furniture the Iowa customers wanted to return to Good's Furniture. They made C.O.D. collections at three to four Iowa locations each week. Furthermore, Good's Furniture advertised its store through an Iowa based television station.

Finally, in *Miller Brothers* there was a lack of certainty that the merchandise sold over the counter to Maryland customers in Delaware was transported to Maryland prior to its use. *National Geographic,* 430 U.S. at 561-62.

Good's Furniture knew when it agreed to make the delivery that the furniture was to be delivered to Iowa.

In determining the power of a state to impose the burden of collecting use taxes upon interstate sales, the simple but controlling question is whether the state has given anything for which it can ask return. *National Bellas Hess, Inc. v. Illinois Rev. Dept.*, 386 U.S. 753, 756 (1967). By reason of its numerous Iowa contacts, Good's Furniture was the recipient of various services provided by the State of Iowa. Among these, for example, were the use of Iowa roads, the benefit of police and fire protection, and the use of Iowa media in its advertising. Good's Furniture, thus, had the benefit of conducting its business activities in Iowa in an ordered and civilized society which exists by reason of government services that this State provides. *See Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 446 (1940). For all of these benefits which Iowa confers upon Good's Furniture, it is not unreasonable for Iowa to require Good's Furniture to collect Iowa use tax from its Iowa customers.

2. There is no substantial federal question raised in the context of this case.

The determination of whether a state can constitutionaliy require a retailer to collect the state's use tax is based upon the extent of the contacts the retailer has with the state. *National Bellas Hess, Inc. v. Illinois Rev. Dept.*, 386 U.S. 753, 756 (1967). Therefore, each case will turn upon its own facts. Good's Furniture's contacts with the State of Iowa are so regular and consequential that "the question in the context of the present case verges on the

frivolous." *Standard Pressed Steel Co. v. State of Washington Department of Revenue,* 419 U.S. 560, 562 (1975). As a result, the Iowa Supreme Court's decision does not raise a substantial federal question.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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